Supreme Court, U.S.
FILED
06-599 OCT 25 2006
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

Bryan Spofford,

Petitioner

v.

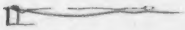
Lisa Spofford
n/k/a Adams

Respondent

On Petition For Writ Of Certiorari
To The Supreme Court of the State of Colorado

PETITION FOR WRIT OF CERTIORARI

Bryan Spofford
960 Mt. Rose Way
Golden, CO 80401
(303) 526-7415



Questions Presented for Review

1. Do C.R.C.P. Rule 54(b) regarding the finality of a judgment on multiple claims, C.A.R. Rule 1(a) limiting Appellate Court jurisdiction to appeals from a final order, and C.R.M. Rule 7 requiring judicial review of magistrate orders prior to appeal create a trap that sometimes violates the Constitutional right of due process?

2. Was Petitioner's access to the courts improperly barred by an impossible situation created by interdependent Colorado statutes?

Parties to Proceeding

1. Bryan Spofford, Petitioner
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   Golden, CO 80401
   (303) 526-7415

2. Gary L. Polidori, Esq. (counsel of record for Lisa Spofford n/k/a Sanderson, Laizure, Adams)
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   550 S. Wadsworth Blvd., #300
   Lakewood, CO 80226
   (303) 936-3300

3. Colorado Supreme Court
   2 East 14th Avenue
   Denver, CO 80203

4. Colorado Court of Appeals
   2 East 14th Avenue
   Denver, CO 80203

5. Jefferson County District Court
   100 Jefferson County Parkway
   Golden, Colorado 80401

Table of Contents

1. Citations of Orders....1
2. Basis for US Supreme Court Jurisdiction....2
3. U.S. Constitution and Colorado Statutes....2
4. Statement of Case....3
5. Argument....5
6. APPENDIX....7
(A) Dismissal of Appeal 03CA1713 (3/26/04)....8
(B) Order to Show Cause in Appeal 05CA0924 (9/29/05)....9
(C) Order to Show Cause in Appeal 05CA0924 (11/14/05)....11
(D) Dismissal of Appeal 05CA0924 (1/17/06)....12
(E Denial of Petition for Rehearing (4/19/06)....13
(F) Denial of Writ of Certiorari (7/31/2006)....14
(G) U.S. Constitution: Fourteenth Amendment....16
(H) C.R.C.P Rule 54(b). Judgment; Costs....16
(I) C.A.R. Rule 1(a). Matters Reviewable....17
(J) C.A.R. Rule 3(d). Appeal as of Right—How Taken....17
(K) C.R.M. Rule 7(a). Review of District Court Magistrate Orders or Judgments....19

Table of Authorities

1. *Rinaldi v. Yeager, 384 U.S. 305, 310 (1966).*
2. *People v. Edwards, 971 P.2d 1080 (Colo. App. 1998).*

Citations of Orders

1. Petitioner filed appeal 03CA1713 on September 2, 2003, regarding two orders issued by a district court on April 30 and July 31, 2003. His appeal was dismissed without prejudice when the Colorado Court of Appeals determined that one issue remained unresolved, and the two orders were not final or appealable (Appendix, p.8).
2. After the final issue was resolved on April 8, 2005, Petitioner timely filed a new appeal 05CA924 on May 2, 2005, of the same two orders issued by a district court judge in 2003. The Colorado Court of Appeals issued an order to show cause on September 29, 2005, why 05CA0924 should not be dismissed as untimely because it appeared that Petitioner was attempting to appeal orders issued in 2003 (Appendix, p.9). This was discharged when Petitioner presented the Court of Appeals order from March 26, 2004.
3. The Colorado Court of Appeals issued an order to show cause on November 14, 2005, why 05CA0924 should not be dismissed because Petitioner was appealing from a magistrate order that had not been reviewed pursuant to Colorado Rules for Magistrates Rule 7 (Appendix, p.11).
4. The Colorado Court of Appeals dismissed 05CA0924 on January 17, 2006, because "appellant failed to seek timely review of the magistrate's order in the district court, and further review is precluded. C.R.M. 7(a)(4)" (Appendix, p.12).
5. Petitioner's motion for rehearing filed on January 30, 2006, was denied on April 19, 2006 (Appendix, p.13).
6. A petition for writ of certiorari was denied by the Colorado Supreme Court on July 31, 2006 (Appendix, p.14).

Basis for US Supreme Court Jurisdiction

A petition for writ of certiorari was denied by the Colorado Supreme Court on July 31, 2006. Petitioner believes that The Supreme Court of the United States has jurisdiction over the instant petition because due process can be denied because specific laws and rules can, in specific situations, preclude the statutory right of appeal. Due process does not obligate the state to establish an avenue of judicial redress (such as appeal), but once the state does so, "these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts." *Rinaldi v. Yeager, 384 U.S. 305, 310 (1966).*

U.S. Constitution and Colorado Statutes

1. **U.S. Constitution. Fourteenth Amendment. Section 1.** Regarding the right of due process, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws" (Appendix, p.16).

2. **Colorado Rules of Civil Procedure. Rule 54(b).** Regarding multiple claims, "any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims" (Appendix, p.17).

3. **Colorado Appellate Rules. Rule 1(a).** Regarding Court of Appeals jurisdiction, "An appeal to the appellate court may be taken from: (1) A final judgment of any district, superior, probate, or juvenile court in all actions or special proceedings whether

governed by these rules or by the statutes" (Appendix, p.17).

3. **Colorado Appellate Rules. Rule (d)(2)(B).** Regarding Petitioner's right to appeal less than all of the orders, "Appeal as of Right—How Taken." "(d) Contents of the Notice of Appeal in Civil Cases (Other Than District Court Review of Agency Actions and Appeals From State Agencies). The notice of appeal shall set forth:" "(B) The judgment, order or parts being appealed and a statement including the basis for the appellate court's jurisdiction" (Appendix, p.17).
4. **Colorado Rules for Magistrates. Rule 7(a)(1).** Regarding requirements for seeking review of a magistrate order, "A motion for review shall state with particularity the alleged errors in the magistrate's order or judgment and may be accompanied by a memorandum brief discussing the authorities relied upon to support the motion." **Rule 7(a)(4).** Regarding requirements for appeal of a magistrate order, "(4) A party to a proceeding conducted by a district court magistrate shall not be entitled to appellate review of any order or judgment entered in that proceeding, unless such party has filed a motion for review of the order or judgment pursuant to these Rules" (Appendix, p.19).

Statement of the Case

On January 23, 2003, about 18 months after Permanent Orders were entered in this marital dissolution case, Respondent filed multiple concurrent motions. These were addressed by the trial court in four separate orders issued piecemeal over a period of two years. The first three of the four orders were issued by a district court judge between April 30 and July 31, 2003. Petitioner filed appeal 03CA1713 of the first and third

orders on September 2, 2003, but the appeal was dismissed on March 26, 2004, when the Court of Appeals determined that one issue remained unresolved and that it did not have jurisdiction until a final order was issued (C.R.C.P. Rule 54(b) and C.A.R. Rule 1(a)).

The final issue was resolved by a magistrate order entered April 8, 2005, which became the final order of the district court 15 days thereafter (C.R.M. Rule 7(a)(3)). Petitioner timely filed a new appeal 05CA0924 of the first and third orders issued in 2003 by a district court judge. In his notice of appeal, he stated that he was appealing from the final order as required by the Court of Appeals order of March 26, 2004, but he had not sought review pursuant to C.R.M. Rule 7 because no part of the magistrate's order was being appealed. An order to show cause issued by the Court of Appeals on September 29, 2005, required Petitioner to justify why he had not timely filed his appeal in 2003 when the two orders on appeal were issued by a district court judge. Petitioner argued that he had timely filed appeal 03CA1713 in 2003, and the order to show cause was discharged when he showed that the Court of Appeals itself had determined in its order of March 26, 2004, that the two orders issued by a district court judge in 2003 would be considered final and appealable when the remaining issue was resolved.

Another order to show cause required, "To the extent that appellant is seeking review of the order modifying parenting time entered on April 8, 2005, that order was entered by a magistrate judge, and pursuant to C.R.M. 6 and 7, review must timely be sought in the district court before an appeal in this Court may proceed." Although Petitioner was not seeking review of any part of the magistrate's order and had stated this in his notice of appeal and two subsequent responses to the Court of Appeals, his appeal was dismissed on January 17, 2006, because C.R.M. 7(a)(4) required timely review of the magistrate order from which the appeal was taken.

Petitioner filed a subsequent motion for rehearing and argued that C.A.R. Rule 3(d)(2)(B) allowed him to state what orders or parts of orders were being appealed. He again noted that only sought review of two orders issued by a district court judge and that no part of the magistrate's order was being appealed. Further, the Court of Appeals had established law of the case in its order of March 26, 2004, that the two orders issued by a district court judge would be considered final and appealable after the last matter was resolved. The order resolving the last issue was signed by a district court magistrate on April 8, 2005, and it became the final order of the court fifteen days later when it remained unchallenged (C.R.M. Rule 7(a)(3)). Moreover, C.R.M. Rule 7(a)(1) required that Petitioner state with particularity the errors made by the magistrate, and it was impossible to comply with this requirement for review since no part of the order was being challenged. Regardless, a rehearing by the Court of Appeals upheld the dismissal of Petitioner's appeal.

Petitioner filed a writ of certiorari with the Colorado Supreme Court, but this was denied on July 31, 2006.

Argument

Although the first three of four separate orders in this case were issued by a district court judge in 2003, C.R.C.P. Rule 54(b) and C.A.R. Rule 1(a) required Petitioner to initiate his appeal of these two orders from the fourth and final order issued by a district court magistrate in 2005. Although C.A.R. Rule 3(d)(2)(B) requires Petitioner to state what order or parts of an order are being appealed, and in this case his notice of appeal and subsequent arguments made it clear that no part of the magistrate's order was being appealed, the Colorado Supreme Court agreed with the Court of Appeals that judicial review pursuant to C.R.M. Rule 7 of the magistrate order issued on April 8, 2005, was a

prerequisite for appellate review of two separate orders issued by a district court judge almost two years earlier. It was impossible for Petitioner to seek review of the unchallenged magistrate order because C.R.M. Rule 7(a)(1) required that he "state with particularity the alleged errors in the magistrate's order." The net effect of these interdependent Colorado statutes was the denial of Petitioner's rightful access to the Court of Appeals.

A century ago, Justice Moody described the right of access to the courts as "the right conservative of all other rights," and without it, the Bill of Rights has no meaning. If state laws create situations that effectively deny access to the courts, individuals can be deprived of any or all of their rights. In this case, the sole reason for barring Petitioner from appealing two orders issued by a district court judge in 2003 was his failure to seek review of a separate, unchallenged magistrate order issued almost two years later.

Petitioner made every reasonable effort to comply with the Colorado Rules of Civil Procedure, Colorado Appellate Rules, Colorado Rules for Magistrates, and each of several orders issued by the Court of Appeals, but he was still denied his statutory right of appeal. The unavoidable situation created by the Colorado statutes cited in this case constructs an impossible barrier that, either by chance or intent, can preclude the rightful appeal of orders issued by a district court judge. "Although the right to appeal is not constitutionally required, once the state affords an individual this right, the procedures afforded by the state must comport with due process." *People v. Edwards, 971 P.2d 1080 (Colo. App. 1998).*

APPENDIX

COLORADO COURT OF APPEALS **ORDER**

No. 03CA1713 Tr. Ct. No. 99DR2441

In re the Marriage of

Bryan Spofford, Appellant,

and

Lisa Spofford, Appellee.

TO: ALL PARTIES

Upon consideration of the responses of both parties confirming that the motion to modify parenting time remains pending and that the order of July 31, 2003, is not a final, appealable judgment or order, IT IS HEREBY ORDERED that the appeal is DISMISSED without prejudice.

BY THE COURT
Davidson, C.J.

Dated: March 26, 2004

Copies to: Counsel of Record
Clerk of the District Court msm/sc

COPIES MAILED TO
COUNSEL OF RECORD
~~Tr. Ct. Judge~~ Tri. Ct. Clerk
AND Pro Se
ON 32604
BY ACG
COLORADO COURT OF APPEALS

COLORADO COURT OF APPEALS **ORDER**

No. 05CA0924 Tr. Ct. No. 99DR2441

In re the Marriage of

Bryan Spofford, Petitioner-Appellant,

and

Lisa Spofford, Respondent-Appellee.

Upon consideration of the response to the Order to Show Cause, and noting that the record has now been received, the Court DISCHARGES the first Order to Show Cause.

However, it appears that appellant is seeking to appeal orders entered by the district court in 2003. Thus, it appears that the notice of appeal was not filed within 45 days of the date of entry of the orders. Moreover, this Court has authority to grant only a 30-day extension of time to file a notice of appeal, and that period has expired. Therefore, it appears that this Court is without jurisdition over the appeal.

To the extent that appeallant is seeking review of the order modifying parenting time, that order was entered by a magistrate judge, and pursuant to C.R.M. 6 and 7, review must timely be sought in the district court before an appeal in this Court may proceed.

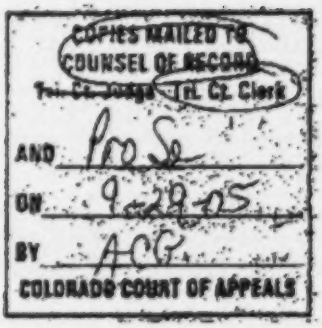
IT IS THEREFORE ORDERED that appellant shall further show cause, if any there is, in writing within 21 days, why this appeal should not be dismissed with prejudice for failure to timely appeal. Failure to file a timely response to this Order shall result in dismissal of the appeal without further notice.

A date for filing the opening brief, if necessary, shall be set once this Order is resolved.

BY THE COURT

Dated: Sept. 29, 2005

Copies to: Counsel of Record pb/sa
District Court



COLORADO COURT OF APPEALS **ORDER**

No. 05CA0924 Tr. Ct. No. 99DR2441

In re the Marriage of:

Bryan Spofford, Petitioner-Appellant,

and

Lisa Spofford, Respondent-Appellee.

Upon consideration of the respone to the Order to Show Cause, the Court DEFERS ruling. Appellant has not addressed the second issue in the Order to Show Cause:

To the extent that appellant is seeking review of the order modifying parenting time entered on April 8, 2005, that order was entered by a magistrate judge, and pursuant to C.R.M. 6 and 7, review must timely be sought in the district court before an appeal in this Court may proceed.

IT IS THEREFORE ORDERED that appellant shall further show cause, if any there is, in writing within 21 days, why this appeal should not be dismissed with prejudice for failure to timely seek district court review. Failure to file a timely response to this Order shall result in dismissal of the appeal without further notice.

A date for filing the opening brief, if necessary, shall be set once this order is resolved.

BY THE COURT

Dated: Nov. 14, 2005

COPIES MAILED TO COUNSEL OF RECORD ~~Tri. Ct. Judge~~ Tri. Ct. Clerk
AND Pro Se
ON 11-14-05 pb/sa
BY AG
COLORADO COURT OF APPEALS

Copies to: Counsel of Record
District Court

COLORADO COURT OF APPEALS **ORDER**

No. 05CA0924 Tr. Ct. No. 99DR2441

In re the Marriage of

Bryan Spofford, Petitioner-Appellant,

and

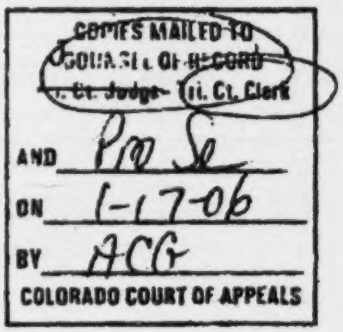
Lisa Spofford, Respondent-Appellee.

Upon consideration of the responses to the Order to Show Cause, the Court DISMISSES the appeal. Assuming that the April 8, 2005, order was the final order allowing review of the 2003 district court orders, appellant failed to seek timely review of the magistrate's order in the district court, and further review is precluded. C.R.M. 7(a)(4).

BY THE COURT:
Graham, J.
Loeb, J.
Hawthorne, J.

Dated: Jan. 17, 2006

Copies to: Counsel of Record pb/3j
Clerk of the District Court



COLORADO COURT OF APPEALS April 19, 2006

No. 05CA0924 Order Denying Petition for Rehearing

In re the Marriage of

Bryan Spofford, Petitioner-Appellant,

and

Lisa Spofford, Respondent-Appellee.

Appeal from the JEFFERSON COUNTY
Honorable JANE A. TIDBALL, Judge
No. 99DR2441

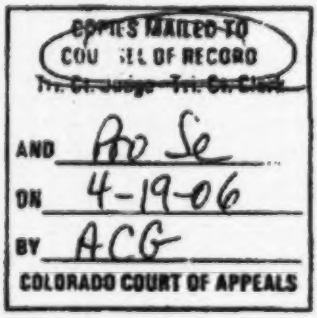
The PETITION FOR REHEARING filed in this appeal by: BRYAN SPOFFORD/APPELLANT is DENIED.

GRAHAM, LOEB, HAWTHORNE

Issuance of the Mandate is stayed until: May 22, 2006.

If a Petition for Certiorari is timely filed with the Supreme Court of Colorado, then the stay shall remain in effect until disposition of the cause by that Court.

By the Court:



SUPREME COURT STATE OF COLORADO
Two East 14th Avenue
Denver, Colorado 80203

Case No.
06SC328

Certiorari to The Court of Appeals, 05CA0924
District Court, Jefferson County, 99DR2441

In re the Marriage of
Petitioner:
Bryan Spofford,
and
Respondent:
Lisa Spofford.

ORDER OF COURT

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, July 31, 2006.

Copies mailed via the State's Mail Services Division on 07/31/06. MLK

Bryan Spofford
960 Mt Rose Way
Golden, CO 80401

Gary L. Polidori
Polidori, Franklin, & Monahan
550 S. Wadsworth Blvd., #300
Lakewood, CO 80226

Clert of the Court
Colorado Court of Appeals

Clerk of the Combined Court
Jefferson Court Facility
100 Jefferson County Pkwy
Golden, CO 80401

Honorable Jane A. Tidball
Jefferson Court Facility
100 Jefferson County Pkwy
Golden, CO 80401

U.S. Constitution: Fourteenth Amendment

Rights Guaranteed Privileges and Immunities of Citizenship, Due Process, and Equal Protection

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Colorado Rules of Civil Procedure

JUDGMENT

Rule 54. Judgment; Costs

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon and express direction for the entry of judgment. In the absence of such a determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims, or parties and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Colorado Appellate Rules

APPLICABILITY OF RULES

Rule 1. Scope of Rules

(a) Matters Reviewable. An appeal to the appellate court may be taken from:

(1) A final judgment of any district, superior, probate, or juvenile court in all actions or special proceedings whether governed by these rules or by the statutes;

Colorado Appellate Rules

APPEALS FROM JUDGMENTS AND ORDERS OF TRIAL COURTS AND AGENCIES

Rule 3. Appeal as of Right—How Taken

(d) Contents of the Notice of Appeal in Civil Cases (Other Than District Court Review of Agency Actions and Appeals From State Agencies).

The notice of appeal shall set forth:

(1) A caption that complies in form with C.A.R. 32. In the caption:

(A) The case title in compliance with C.A.R. 12(a). In the caption:

(B) The trial court from which the appeal is taken;

(C) The trial court judge;

(D) The party or parties initiating the appeal; and

(E) The trial court case number.

(2) A brief description of the nature of the case including:

(A) A general statement of the nature of the controversy (not to exceed one page);

(B) The judgment, order or parts being appealed and a statement including the basis for the appellate court's jurisdiction;

(C) Whether the judgment or order resolved all issues pending before the trial court including attorneys' fees and costs;

(D) Whether the judgment was made final for purposes of appeal pursuant to C.R.C.P. 54(b);

(E) The date the judgment or order was entered (if there is a question of the date, set forth the details) and the date of mailing to counsel;

(F) Whether there were any extensions granted to file any motion(s) for post-trial relief. If so, the date of the request, whether the request was granted and date to which filing was extended;

(G) The date any motion for post-trial relief was filed;

(H) The date any motion for post-trial relief was denied or deemed denied under C.R.C.P. 59(j); and

(I) Whether there were any extensions granted to file any notice(s) of appeal. If so, the date of the request, whether the request was granted and the date to which filing was extended.

(3) An advisory listing of the issues to be raised on appeal;

(4) Whether the transcipt of any evidence taken before the trial court or any administrative agency is necessary to resolve the issues raised on appeal, the name of the court reporter, and the approximate length of any transcript of testimony anticipated to be filed in this action;

(5) As to filing in the Court of Appeals only, state whether or not a preargument conference is requested;

(6) The names of counsel for the parties, their addresses, telephone numbers, and registration numbers;

(7) An appendix containing a copy of the judgment or order being appealed, the findings of the court, if any, the motion for a new trial, if any, and a copy of the trial court's order granting or denying leave to proceed in forma pauperis if appellant is filing without docket fee pursuant to C.A.R. 12(b); and

(8) A certificate of service, in compliance with C.A.R. Rule 25 showing service of a copy of the notice of appeal

(with attachments) on the trial court and all other parties to the action in the trial court.

Colorado Rules for Magistrates

Rule 7. Review of District Court Magistrate Orders or Judgments

(a) Orders or judgments entered without consent: The chief judge shall designate one or more district judges to review orders or judgments of the district court magistrates entered without consent of the parties.

(1) A party may obtain review of the magistrate's order or judgment by filing a motion to review such order or judgment with the reviewing judge no later than fifteen days, unless a shorter period of time has been set by statute, subsequent to the date of the order or judgment. A motion for review shall state with particularity the alleged errors in the magistrate's order or judgment and may be accompanied by a memorandum brief discussing the authorities relied upon to support the motion. Copies of the motion and any supporting brief shall be served on all other parties by the party seeking review. Within ten days after being served with a motion for review, a party may file a memorandum brief opposing the motion.

(2) The reviewing judge shall consider a motion for review on the basis of the motions and briefs filed, together with such review of the record as may be necessary. Findings of fact made by the magistrate may not be altered unless clearly erroneous. The reviewing judge may conduct further proceedings, take additional evidence, or order a trial de novo in the district court. The reviewing judge shall adopt, reject, or modify the initial order or judgment of the magistrate by written order, which order shall be the order or judgment of the district court.

(3) If timely review is not requested, the order or judgment of the magistrate shall become the order or judgment of the district court.

(4) A party to a proceeding conducted by a district court magistrate shall not be entitled to appellate review of any order or judgment entered in that proceeding, unless such party has filed a motion for review of the order or judgment pursuant to these Rules.